MINERAL INVESTIGATION AND DEVELOPMENT CO.

IBLA 83-161 Decided March 31, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void, and rejecting application for mineral patent. U MC 134289 through U MC 134310, U MC 202090, U 49853.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land before Oct. 21, 1976, must file a copy of the location notice and evidence of assessment work with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and evidence of assessment work performed or a notice of intention to hold the claim on or before Dec. 30 of every year hereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or a notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

   The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Federal Land Policy and Management Act of 1976: Generally -- Mining Claims: Patent

   It is proper to reject an application for mineral patent where the official records disclose that the alleged claims have been conclusively determined to be abandoned and void for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Kenneth D. Westwood, agent for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mineral Investigation and Development Co. (MIDCO) appeals the November 2, 1982, decision of the Utah State Office, Bureau of Land Management (BLM), which declared the unpatented Hornet, Hornet Nos. 2 through 7, Hornet No. 3-B, She Nos. 1 through 12, Rico Nos. 1 and 2 lode mining claims, U MC 134289 through U MC 134310, and Millsite U MC 202090 abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM for the 1980 assessment year on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and which also rejected mineral patent application U 49853 for the Hornet, She Nos. 1, 2, 3, 6, and 7, and the Millsite because the claims were deemed to be abandoned and void at the time the mineral patent application was filed.

The mining claims were located in 1969, and were recorded with BLM October 11, 1979. Evidence of assessment work was filed with BLM October 11, 1979, and September 21, 1981.

Appellant alleges that a proof of labor was filed with BLM in October 1980. Appellant asserts that BLM challenged the proof of labor because it

had no U MC identification numbers. Appellant charges that BLM had never advised it of the U MC numbers so it could not put the numbers on the proof of labor. Appellant asserts that it made inquiry to BLM, which brought a promise to investigate. As appellant did not hear from BLM, it assumed the matter had been resolved with the proper U MC numbers affixed to the proof of labor. Appellant asserts it sent the 1981 proof of labor in the same manner to BLM, i.e., without U MC numbers. BLM acknowledged receipt of the 1981 proof of labor, listing the claim names and U MC numbers, with the request that the U MC numbers be used in future correspondence. Appellant contends that if BLM could affix the U MC numbers to the 1981 proof of labor, it should have been able to do the same with the 1980 proof of labor.

BLM has responded that a thorough and careful search through the mining claim records does not disclose any trace of a 1980 proof of labor from MIDCO. BLM stated the mining claims are indexed three ways, by name of claim, by name of claimant, and by geographical location, i.e., section, township, and range. If a proof of labor had been received from MIDCO in 1980, it surely could have been identified by reference to one of the three indices.

[1] Under section 314 of FLPMA, the owner of a mining claim located before October 21, 1976, had to record the claim with BLM on or before October 22, 1979, and file a notice of intention to hold the claim or evidence of the performance of assessment work on the claim prior to December 31 of every year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold the claim be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on the mining claim, but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state office, whether proof of labor or notice of intention to hold the claim, in the proper office of BLM. Where, as in this case, there is no record that the 1980 proof of labor was submitted to BLM, there was no discretion under the statute for BLM to determine that the claims had not been abandoned. This Board has no authority to excuse the statutory consequences. See Lynn Keith, supra; Glenn J. McCrory, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

> The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an

> administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

52 IBLA at 196, 88 I.D. at 371-72.

Despite appellant's statement that the documents were properly and timely delivered to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). BLM has reported that it has no record of the proofs of labor being received, after searching in every case file pertinent to this appellant.

[3] As the claims described in the mineral patent application U 49853 were considered abandoned and void when that application was filed by this appellant, BLM properly rejected the patent application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Anne Poindexter Lewis
Administrative Judge